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James Joseph Lynch, Jr.
Attorney At Law (85805)

February 6, 2011

The Hon. Tani Cantil-Sakauye, Chief Justice
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

RE: *Perry v. Schwarzenegger (Hollingsworth)*, California Supreme Court # S189476
Certification Request pending from the 9th Cir. U.S. Court of Appeals # 10-16696

Dear Chief Justice and Associate Justices:

Amicus Curiae Margie Reilly, has appeared in this case previously on the question of Prop 8 (*In re Marriage Cases* (2008) 43 Cal.4th 757 (S147999, May. 15, 2008)), and has appeared in the 9th Circuit as *Amicus Curiae* to defend Proposition 8, and hereby, in accordance with California Rule of Court 8.548(c)(3) in response to the City and County of San Francisco letter of January 24, 2011, respectfully submits that response to the certified questions appear to be warranted, that the question presented should be answered in the affirmative, and that other issues raised by the principal question suggests that those additional observations should be submitted with its response to the request for certification as follows:

STATEMENT OF THE ISSUES

A. CERTIFIED QUESTION:

Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official proponents of an initiative measure possess either a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity, which would enable them to defend the constitutionality of the initiative upon its adoption or appeal a judgment invalidating the initiative, when the public officials charged with that duty refuse to do so.?

B. OTHER, REASONABLY RELATED, QUESTIONS:

Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official opponents of an initiative measure possess either a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity, which would enable them to oppose the constitutionality of the initiative upon its adoption or appeal a judgment to invalidate the initiative, when the public officials charged with that duty refuse to do so.?

SUMMARY OF ARGUMENTS

1. Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, by virtue of Article I, §§ 3 & 24 the official proponents and opponents of an

initiative measure do possess standing to petition for redress on the issue of whether a proposition or initiative is constitutional under California Law, or Federal 14th Amendment grounds, with a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity, which would enable them to challenge or defend the constitutionality of the initiative upon its adoption or appeal a judgment regarding the initiative, when the public officials charged with that duty refuse to do so. *See generally, Selinger v. City Council* (1989) 216 Cal.App.3d 259, 272: ("Our system of government places a high value on the freedom of the public to petition the government, and such activity will not be curtailed without some extraordinary showing of abuse." (Id. at p. 859.)); *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, fn. 14., ("This doctrine relies on the constitutional right to petition for redress of grievances to establish that there is no antitrust liability for petitioning any branch of government, even if the motive is anticompetitive").

a. Article 1, §§ 3 and 24 protects the rights of the People to assemble for the purpose of instructing government and their representatives, on how to provide for the common good, in this case, the promotion of traditional families for the production of new life so that the state can endure, and to promote monogamy to prevent the spread of dangerous diseases in the community, and § 24.

b. Article 1, § 3, also protects the rights of the People to peacefully assemble and to petition for redress of grievances. The traditional means of petitioning for redress of perceived abuses of government power, or any other power which defines government power is a petition for a writ of mandate, prohibition, or review in the courts of law. Black's Law Dictionary (Revised 4th ed 1968), Mandamus, p. 1113. Section 3 secures to the People the right to petition as to whether a particular adoption of a constitutional provision is appropriate, or an abuse of power. Both this provision and First Amendment appear to be derived from the *Magna Carta* (1514) Article 61. *See generally, Constitution of the United States of America: Analysis & Interpretation* (1992), Senate Document # 103-6 p. 1187, fn. 207, which is to the same effect; see also, There was a common law right to petition for redress of grievances. McKechnie, *THE MAGNA CARTA*, Art. 61 (1215) : Petition of Right 1628; English Bill of Rights (1685); Schwartz, *THE BILL OF RIGHTS: A DOCUMENTARY HISTORY*. A copy of the Petition of Right and English Bill of Rights can be found in the McGeorge School of Law Library and on the University of California on line Melvyl library catalog at <http://melvyl.cdlib.org/>. Most are housed in the British Law section.

CONSTITUTIONAL HISTORY AND PROVISIONS INVOLVED

MAGNA Charta [1514] Article [Chapter] 61

“ Since, moreover, for God and the betterment of our kingdom and for the better allaying of the discord that has arisen between us and our barons we have granted all these things aforesaid, wishing them to enjoy the use of them unimpaired and unshaken for ever, we give and grant them the under-written security, namely, that the barons shall choose any twenty-five barons of the kingdom they wish, who must with all their might observe, hold and cause to be observed, the peace and liberties which we have granted and confirmed to them by this present charter of

ours, so that if we, or our justiciar¹, or our bailiffs or any one of our servants offend in any way against anyone or transgress any of the articles of the peace or the security and the offence be notified to four of the aforesaid twenty-five barons, those four barons shall come to us, or to our justiciar if we are out of the kingdom, and, laying the transgression before us, shall petition us to have that transgression corrected without delay. And if we do not correct the transgression, or if we are out of the kingdom, if our justiciar does not correct it, within forty days, reckoning from the time it was brought to our notice or to that of our justiciar if we were out of the kingdom, the aforesaid four barons shall refer that case to the rest of the twenty-five barons and those twenty-five barons together with the community of the whole land shall distrain and distress us in every way they can, namely, by seizing castles, lands, possessions, and in such other ways as they can, saving our person and the persons of our queen and our children, until, in their opinion, amends have been made: and when amends have been made, they shall obey us as they did before.

CALIFORNIA CONSTITUTION, ARTICLE I, DECLARATION OF RIGHTS,

provides, inter alia, as follows:

“SEC. 3. The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.”

“SECTION 24. “Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution. . . . This declaration of rights may not be construed to impair or deny others retained by the people.”

ARTICLE 2, VOTING, INITIATIVE AND REFERENDUM, AND RECALL provides.²

inter alia,

“SECTION 1. All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.”

“SEC. 8. (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them. ”

In *Selinger v. City Council* (1989) 216 Cal.App.3d 259, 272, the court observed, “The City Council’s standing to raise this issue is further supported by the analogous principle that the government generally cannot be estopped by the conduct of its individual officers where to do so would contravene an important public policy. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d

¹ [In old English Law. A judge or justice. One of Several persons learned in the aw. ho sa in the *aula regis*. formed a kind of court of appeal in cases of difficulty. Also spelled *justicier*.]

² See also, ARTICLE 18. AMENDING AND REVISING THE CONSTITUTION

462, 493. The rationale for this rule is that local citizens should not suffer because government officials neglect their duty. Here, likewise, the City's failure to provide notice and a hearing should not destroy local citizens' rights to procedural due process."

By the same token, the Proponents standing to raise this issue, defense of the proposition, is supported by the analogous principal that the State of California cannot be estopped by the conduct of its individual officers, here the attorney general, where to do so would contravene an important public policy. The rationale for this rule is that the Citizens of the State, the Sovereignty, should not suffer because government officials neglect their duty. See also, by analogy,

CONCLUSION

This Court rightly determined that Proposition 8, defining Marriage, was properly decided and upheld it. Thus, this court ought to take the certified question, and related questions to answer in the affirmative, based on *Selinger, supra*, that the People of the State of California have standing to defend a proposition which the Constitution guaranteed them to adopt.

Respectfully,


JAMES JOSEPH LYNCH, JR.
Attorney for Amicus Curiae Margie Rielly

PROOF OF SERVICE

I, JAMES JOSEPH LYNCH, JR (SBN 85805), am a citizen of the United States, a member of the California bar, and not a party to the within action.

On February 7, 2011, I served the following document:
LETTER TO THE CALIFORNIA SUPREME COURT re certification request pending from the
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED FEBRUARY 7, 2011, 2011.


JAMES JOSEPH LYNCH, JR.

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